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9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 ALYSSA BALL,

12 JOHN PRIGNANO,

13 and

14 JANE ROE,

15 Plaintiffs,

16 vs.

17 SKILLZ INC.,

18 Defendant.

CASE No. 2:20-cv-00888-JAD-BNW

**DECLARATION OF ELLIOTT KAPLAN
IN SUPPORT OF DEFENDANT SKILLZ
INC.'S MOTION TO COMPEL
ARBITRATION AND MOTION TO
DISMISS PLAINTIFFS' FIRST
AMENDED COMPLAINT**

DECLARATION OF ELLIOTT KAPLAN

I, ELLIOTT KAPLAN, declare as follows:

1. I have been employed at Skillz Inc. (“Skillz”) since February 22, 2016. My current position at Skillz, which I have held since December 2019, is Vice President of Customer Advocacy. My responsibilities in that position include overseeing Skillz’ Customer Service team. I also oversee Skillz’ Trust and Safety team, which works to prevent cheating and abuse on Skillz’ gaming platform with the goal of providing the Skillz player community with fair and level competition. Prior to becoming Vice President of Customer Advocacy, I held the position of Director of Customer Service, with similar responsibilities to those I have as Director of Customer Service. I became Director of Customer Service when I joined Skillz in February 2016.

2. I submit this declaration in support of Skillz’ motion to dismiss and compel arbitration in the above-captioned action. I have personal knowledge of the following facts and, if called and sworn in as a witness, could and would competently testify thereto.

3. Skillz is one of the world’s leading mobile games platforms. It hosts numerous online skills-based games, in which players can compete for cash prizes in head-to-head matches or tournament-style play. 21 Blitz is one of the games hosted on Skillz’ platform.

4. In order to play 21 Blitz or other games hosted on Skillz’ platform, a user must establish a Skillz account. A player who wishes to participate in paid entry competitions must save their account by providing an email address for the account and verifying their age via the following screen:

The screenshot displays a mobile application interface. At the top, there are three buttons: 'SAVE ACCOUNT' with a lock icon, 'LOGIN' with a right-pointing arrow icon, and 'AUDIO SETTINGS' with a speaker icon. Below these buttons is a dark section with a faint 'DOMINATE' logo. The main section is light yellow and contains the text 'Enter Your Date of Birth' above a white input box with the date '5/19/1991'. Below the input box is an orange 'NEXT' button. At the bottom of the yellow section, there is a line of small text: 'By tapping "Next", I agree to the Terms of Service and the Privacy Policy.' The bottom of the screen is a dark footer area.

5. As shown above, after entering their date of birth, a user must tap on “Next” in order to save their Skillz account. Below the box labeled “Next” is an advisory stating, “By tapping ‘Next’, I agree to the Terms of Service and the Privacy Policy.” The underlined text in the advisory is a hyperlink, which, when tapped, brings the user to the webpage located at *skillz.com/legal*, on which is posted Skillz’ Terms of Service and Privacy Policy. By reviewing past versions of our platform software, I have confirmed that this has been the case since at least January 1, 2018.

1 6. I am aware from my personal participation in the investigation referenced below
2 and review of Skillz correspondence with John Prignano and Alyssa Ball that (i) John Prignano
3 maintained a Skillz account under the username “Prignum42,” which was linked to the email
4 address “[REDACTED],” and (ii) Alyssa Ball maintained a Skillz account “Lysnico,”
5 which was linked to the email address “[REDACTED]” Skillz’ personnel have
6 communicated with Mr. Prignano and Ms. Ball about their respective Skillz’ accounts through
7 these email addresses. Attached as **Exhibits 1** and **2** are examples of such correspondence.
8

9 7. I am aware from my review of Skillz correspondence with “[REDACTED]”
10 [Plaintiff Jane Roe] and other Skillz business records that “[REDACTED]” [Plaintiff Roe] created
11 three Skillz accounts. “[REDACTED]” [Plaintiff Roe] maintained a Skillz account
12 “Breadnbutter37,” which was linked to the email address “[REDACTED]”; a Skillz
13 account “DrDampWeeder,” which was linked to the email address “[REDACTED]”;
14 and a Skillz account “LetterFourJr,” which was linked to the email address
15 “[REDACTED]” Skillz’ personnel have received communications from “[REDACTED]”
16 [Plaintiff Roe] about her Skillz accounts through these email addresses.
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18 8. Skillz maintains a database of the dates user accounts are established. By
19 querying that database, I found that (i) the “Prignum 42” user account was established on
20 January 8, 2018, (ii) the “Lysnico” user account was established on April 25, 2019; (iii) the
21 “Breadnbutter37” user account was established on February 11, 2019; (iv) the “DrDampWeeder”
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1 user account was established on November 17, 2019¹; and (v) the “LetterFourJr” user account
2 was established on January 10, 2020.²

3 9. In order to deposit funds and then participate in paid entry competitions, a user
4 must save their Skillz account. Skillz maintains a database of financial transactions associated
5 with each Skillz account. By having this database queried, I found that: (i) the first deposit of
6 funds and first paid entry competition for the Prignum42 account occurred on January 2, 2019;
7 (ii) the first deposit of funds and first paid entry competition for the Lysnico account occurred on
8 April 25, 2019; (iii) the first deposit of funds and first paid entry competition for the
9 Breadnbutter37 account occurred on February 16, 2019. This confirms that these accounts had
10 been saved not later than those dates; as noted above, a user cannot participate in paid entry
11 competition unless their Skillz account has been saved.
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13 10. Attached hereto as **Exhibit 3** is a true and correct copy of Skillz’ Terms of
14 Service, as they existed between January 8, 2018 and April 25, 2019. Sections 1.1 and 14 of the
15 Terms of Service relate to arbitration. The Terms of Service were amended on October 10,
16 2019, but Sections 1.1 and 14 were unchanged. A true and correct copy of the Terms of Service,
17 as amended on October 10, 2019, is attached hereto as **Exhibit 4**. The Terms of Service, as
18 amended on October 10, 2019 (reflected in Exhibit 4), remained the same through and beyond
19 January 2020.
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24 ¹ Creating multiple Skillz accounts is a violation of the Skillz Terms of Service.
25 Accordingly, Skillz closed the DrDampWeeder account on November 18, 2019.

26 ² Skillz closed the LetterFourJr account on January 11, 2020. [REDACTED] [Plaintiff Roe]
27 was no longer allowed on the Skillz platform by that time.

1 11. Through queries of the database referenced in paragraph 9, above, I also found
2 that: (i) the first deposit of funds and first paid entry competition for the DrDampWeeder
3 account occurred on November 17, 2019; and (ii) the first deposit of funds and first paid entry
4 competition for the LetterFourJr account occurred on January 10, 2020. This confirms that these
5 accounts had been saved not later than those dates; as noted above, a user cannot participate in
6 paid entry competition unless their Skillz account has been saved.

7 12. As an incentive for players, Skillz maintains a loyalty program through which
8 players can earn “Ticketz” – a form of virtual currency on Skillz’ platform – based on the
9 frequency of their play. Ticketz can be used to redeem prizes. The top prize is a Porsche
10 Boxster.

11 13. In August 2019, Prignano attempted to redeem Ticketz for a Porsche Boxster.
12 Around this time, Skillz received complaints from other Skillz community members about
13 Prignano’s gameplay. Skillz investigated those complaints. In connection with that
14 investigation, Prignano reiterated his agreement to Skillz’ Terms of Service in email
15 correspondence with Skillz. *See Exhibit 5.*

16 14. Prignano satisfied initial tests showing that his playing ability was consistent with
17 his level of skill. However, Skillz received information from other players in the form of text
18 messages indicating that Prignano has been strategically aborting games in order to avoid losses.
19 Skillz has confirmed the existence of such conduct through the use of analytics.

20 15. Skillz also received evidence in the form of text messages suggesting that
21 Prignano had colluded with Ball to manipulate the results of tournament play by throwing games
22 to each other. Skillz has confirmed the existence of such collusion through the use of analytics.
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17. Based on the findings of its investigation, Skillz sent a notice to Prignano on March 13, 2020, notifying him that he has been permanently banned from Skillz' platform and that his winnings are forfeited and/or subject to recoupment. A copy of that notice is attached hereto as **Exhibit 1**.

18. Based on the findings of its investigation, Skillz sent a notice to Ball on April 28, 2020, notifying her that she has been permanently banned from Skillz' platform and that her winnings are forfeited and/or subject to recoupment. A copy of that notice is attached hereto as **Exhibit 2**.

19. Promoting sensible gaming is part of our culture at Skillz. Skillz' goal is to build a player community of people committed to fair, fun, and meaningful competition. Skillz leadership team is committed to promoting responsible behavior among Skillz players. Skillz takes steps to detect and deter overspending on the Skillz platform by Skillz users, as this is an unacceptable customer experience. For example, Skillz dedicates human and technical resources to detect sudden changes in account activity, reaches out to players to check in, and, in some cases, temporarily or permanently closes accounts where Skillz sees an unusual pattern of high dollar losses (amount or velocity). Skillz also has documented procedures for when Skillz users inform Skillz that their playing has created personal financial stress.

1 I declare under penalty of perjury under the law of Nevada that the foregoing is true and
2 correct.

3 Executed this 17th day of August, 2020, in Portland, Oregon.
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5 DocuSigned by:

6 *Elliott Kaplan*

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8 Elliott Kaplan
9 Skillz Vice President of Customer Advocacy
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